

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

[APR 19 1993]

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of the Commission's :	
Rules to Permit Private :	PR Docket No. 93-38
Carrier Paging Licensees :	RM-8017
to Provide Service to :	
Individuals :	

COMMENTS OF BELL SOUTH CORPORATION

BellSouth Corporation ("BellSouth") and its subsidiary, Mobile Communications Corporation of America ("MobileComm"), by its attorneys, herewith submit comments in response to the Commission's Notice of Proposed Rule Making¹ ("Notice") and subsequent Erratum² in the above-captioned proceeding. The Notice ensued following a petition for rule making filed by the Association for Private Carrier Paging Section of the National Business and Educational Radio, Inc. ("NABER") seeking amendment to the Commission's Rules to permit private carrier paging systems ("PCPs")³ to provide service to individuals.

¹Amendment of the Commission's Rules to Permit Private Carrier Paging Licensees to Provide Service to Individuals ("Notice"), PR Docket No. 93-38, RM-8017, released March 12, 1993.

²The Erratum, released on March 16, 1993, corrects filing dates as follows: Comments, April 19, 1993; Reply Comments, May 4, 1993.

³The Commission has described these entities thusly: "PCP service above 900 MHz, governed by Part 90, Subpart P, as well as paging-only channels below 900 MHz in the Business Radio Service, governed by Part 90, Subpart D." Notice, para. 3, n.3.

No. of Copies rec'd
List A B C D E

044

BACKGROUND

Part 90 of the Commission's Rules currently authorizes PCPs to offer paging services only to end users who are themselves eligible for licensing under Part 90 and to the federal government.⁴ Those entities eligible for licenses include businesses, and state and local government. Private individuals are not eligible.

The Commission, authorizing PCPs in 1982, "envisioned PCP service primarily as a cost-effective means for business and government entities to obtain paging service without having to build in-house paging systems."⁵ In 1989 the Commission proposed to enlarge the class of eligibles for PCPs (and Business Radio Service) to include both individuals and the federal government.⁶ However, in its Report and Order,⁷ released in January 1991, the Commission did not do so, electing instead to authorize government use only:

Unlike the Federal Government, individuals do not have communications needs that cannot be satisfied within existing options....

⁴See 47 C.F.R. Sections 90.75(c), 90.494(a).

⁵Notice, para. 4.

⁶Notice of Proposed Rule Making, Amendment of Part 90 of the Commission's Rules to Expand Eligibility and Shared Use Criteria in the Private Land Mobile Services, PR Docket No. 89-45, 4 FCC Rcd 2589 (1989).

⁷Report and Order, Amendment of Part 90 of the Commission's Rules to Expand Eligibility and Shared Use Criteria in the Private Land Mobile Services ("Original Order"), PR Docket 89-45, 6 FCC Rcd 542 (1991).

Additionally, in the case of individuals,
there is no history of waiver grants to
~~foreign individuals based on identity~~

action.¹¹ In addition, NABER argues that "the ability to utilize a PCP system will be important for customers in more remote markets, where service options are limited."¹²

Several parties filed comments¹³ supporting the petition. Telocator, while supporting the specific proposal as a practical matter, notes the "remaining regulatory disparities between private and common carrier paging providers...are equally arbitrary and injurious to the Commission's recognized goal...."¹⁴ PacTel urged that relaxation of the rule will be beneficial in markets where common carrier spectrum is crowded, as well as in more remote markets where it heretofore has been uneconomical for PCPs to serve.¹⁵ PageMart, Inc. ("PageMart"), reiterates NABER's assertions of the rule's burdensome business

¹¹NABER Petition at 8. NABER cites the proceeding in PR Docket No. 86-404 wherein the Commission extended eligibility for SMR service to individuals. Report and Order, PR Docket No. 86-404, 3 FCC Rcd 1838 (1988). NABER makes the assertions that "common carrier providers, by virtue of their common carrier status, may not be able or permitted to meet specialized requirements of certain customers" (at 8-9); that expansion of eligibility "should not undermine the availability of spectrum for users of PCP" (at 9); and that PCPs "may make individualized decisions to include or exclude a particular user or class of users if the operator does not choose to serve such person or groups" (at 9).

¹²NABER Petition at 10.

¹³Paging Network, Inc., PageMart, Inc., PacTel Paging, and Telocator.

¹⁴Comments of Telocator at 3, n.3.

¹⁵Comments of PacTel at 11.

practice necessities, and further asserts that the Commission is legally compelled to take the requested liberalizing action because of prior similar actions in the SMR proceeding. PageMart agrees with PacTel that elimination of the rule will benefit areas with crowded common carrier spectrum and will provide an incentive for PCPs to serve rural areas.¹⁶ Indeed, PageMart pins the entire underutilization of the PCP frequencies to the present rule: "Absent relaxation..., the Commission will face a period of rapid growth in paging demand with a market structure preventing full utilization of spectrum...."¹⁷ PageMart sees the raison d'être of PCPs to be competitors with common carrier paging,¹⁸ and that relaxation of the rule will go far in making this a reality. While PageMart acknowledges the high price of common carrier regulation, its solution lies not in alleviating these burdens but, rather, in introducing a much-less-regulated competitor.

In its Notice, the Commission has agreed to revisit the eligibility rule and proposes to eliminate it:

[T]he rapid growth in demand for paging services suggests that individual users would benefit from being able to choose between private and common carrier paging alternatives. [A]llowing individual access to PCP services would remove an unnecessary barrier to the

¹⁶Reply Comments of PageMart at 3.

¹⁷Comments of PageMart at 6.

¹⁸Comments of PageMart at 12.

ability of PCP systems to compete fully in the paging marketplace. [W]e see no countervailing benefit to the public from retaining the current rule.¹⁹

* * *

The rule appears to be primarily a carry over from the period when our private land mobile user eligibility rules were considerably more restrictive. Many of these rules have now been eliminated with no detriment to service quality, as in our decision in PR Docket 86-404 to allow SMR systems to serve individuals. We believe the same principles that guided our SMR decision are applicable here and that our paging and SMR user eligibility rules should therefore be made consistent [footnote omitted].²⁰

THE PROPOSED AMENDMENT CONTINUES TO ERODE MARKETPLACE STRUCTURE WITHOUT FULLY ADDRESSING THE UNEQUAL REGULATORY BURDENS

MobileComm operates (and has, for many years, operated) in a competitive, marketplace-oriented environment. It does so, even though it continues to be laden with continuing and burdensome common carrier regulation. Petitioner NABER acknowledges some of these strictures in its petition: "common carrier providers, by virtue of their common carrier status, may not be able or permitted to meet specialized requirements of certain customers."²¹ The Commission itself

¹⁹ Notice, para. 7.

²⁰ Notice, para. 12.

²¹ NABER Petition, p. 9.

recognizes these regulatory costs,²² but does not consider them germane to this proceeding. But why are they not germane? If the Commission considers it important to relieve PCPs from an "unnecessary barrier to [their] ability to compete fully in the paging marketplace," should it not consider the importance of the effect of this unfettered competition on common carriers who remain constricted? It is not the fact of competition--or even more competition--to which MobilComm directs the Commission's attention. MobileComm does not fear competition; it welcomes it. But it is concerned that the proposed amendment will be considered in a vacuum, without full attention to the entire paging regulatory structure. Consideration of this structure, with its extraordinary burdens on common carrier paging operations, begs for caution and considered judgment, not an enlargement of the already-existing competitive disparity.²³

Marketplace and competitive considerations cannot be addressed piecemeal. Fairness and equity dictate a balanced approach to changes in the rules. Otherwise, any

²²"...because PCP operators are not subject to common carrier regulation, they may be able to offer specialized service tailored to the user's particular needs. [footnote omitted]" Notice, para. 9.

²³The costs of regulation to which MobileComm is subject include various forms of regulation which exist in all of the states in which it operates: tariff filings, approvals, rate change procedures (all causing costs as well as delays in meeting competition), and special utility taxes.

competition which does exist in the paging marketplace may very well be diminished by a series of measures each of which, if considered singly, may have much to be said for it. The proposed amendment is perhaps one of these measures.

Telocator has not opposed the change itself--it has a number of things, "considered singly," which may commend it. On the other hand, Telocator is also concerned by the consideration of the individual end user issue in isolation from other competitive issues. MobileComm agrees and urges further that the Commission consider the implications this rule change may have on the existing paging regulatory structure. To do otherwise would be an exercise in "unreasoned decisionmaking."²⁴ It is well-established that

MobileComm urges consideration of the competitive burdens which it and similarly situated paging providers now shoulder, as well as those burdens which it may shoulder in the future resulting from a grant of petitioner's request.

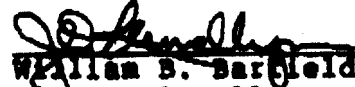
CONCLUSION

For the foregoing reasons, BellSouth and MobileComm ask the Commission to address questions of policy relating to any imbalance in the regulatory structure caused by this, as well as other, requested alterations, so that all licensees who provide essentially the same services will operate under the same rules.

Respectfully submitted,

BELLSOUTH CORPORATION

By:


William B. Bartfield
Jim O. Llewellyn
Suite 1800
1155 Peachtree Street, N.E.
Atlanta, GA 30367-6000
(404) 249-2641

Charles P. Featherstun
BELLSOUTH D.C., INC.
Suite 900
1133 21st Street, N.W.
Washington, D.C. 20036
(202) 463-4155

April 19, 1993

CERTIFICATE OF SERVICE

I, Evelyn T. Craig, do hereby certify on this 19th day of April, 1993, that I have caused a copy of the foregoing Comments of BellSouth Corporation to be served, via first class United States mail, postage prepaid, to the persons named on the attached service list.


Evelyn T. Craig

SERVICE LIST
PR DOCKET NO. 93-38
RM-8017

Radio Call Company, Inc.
Jerome S. Boros
Rosenman & Colin
575 Madison Avenue
New York, NY 10022

First National Paging Company, Inc.
Paul C. Besozzi
Besozzi & Gavin
1901 L Street, N.W.
Suite 200
Washington, D.C. 20036

Association for Private Carrier
Paging Section of the National
Association of Business and
Educational Radio, Inc.
David Weisman
Alan S. Tilles
Meyer, Faller, Weisman and
Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015

PageMart, Inc.
Jeffrey Blumenfeld
Glenn Manishin
Mary E. Ward, Telecommunications Consultant
Blumenfeld & Cohen
1615 M Street, N.W., Suite 700
Washington, D.C. 20036

Telocator
R. Michael Senkowski
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006